



Paper No. 16

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**OFFICE OF PETITIONS**

In re Application of  
Meek et al.  
Application No. 10/024,808  
Filed: December 19, 2001  
Atty Docket Number: P51217

DECISION ON PETITION

This is a decision on the "PETITION TO ACCEPT AN UNINTENTIONALLY DELAYED CLAIM FOR PRIORITY UNDER 35 U.S.C. 120," filed August 19, 2004. This decision is made in light of the amendment filed February 23, 2005.

The petition is **GRANTED**.

A petition under 37 CFR 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of a prior filed provisional application, is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5), and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the surcharge set forth in 37 CFR 1.17(t);
- (2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5) and the date the claim was filed was unintentional; and
- (3) the reference to the prior filed provisional application, supplied in an application data sheet (ADS) (37 CFR 1.76) or as an amendment in the first sentence of the specification following the title. See 35 USC 119(e) and 37 CFR 1.78(a)(5). The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed on December 19, 2001, within twelve months of the filing date of the

prior provisional application, Application No. 60/259,595, which was filed on January 3, 2001, and for which priority is claimed. A reference to the prior provisional application has been included as an amendment<sup>1</sup> to the first sentence of the specification following the title.

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(5). Also, the reference to the prior filed provisional application was submitted during the pendency of the nonprovisional application for which the benefit is sought. See 35 USC 119(e). Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 USC 119(e), the petition to accept an unintentionally delayed claim of benefit to prior filed provisional Application No. 60/259,595 is granted as of the date of filing the petition.

As authorized, the \$1,330 fee required by 37 CFR 1.78(a)(6) has been charged to petitioner's Deposit Account No. 19-2570, as authorized.

The application is being forwarded to the Office of Initial Patent Examination for pre-examination processing, which will include entry of continuity with prior filed provisional Application No. 60/259,595, filed January 3, 2001, and for mailing of a corrected filing receipt with the projected publication date. Thereafter, the application will be forwarded to Technology Center AU 1645 for processing the amendment filed June 1, 2004 (resubmitted in proper form on February 23, 2005) and for consideration by the examiner of the claim under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior provisional application, Application No. 60/259,595, filed on January 3, 2001.

Any inquiries concerning this decision may be directed to Senior Petitions Attorney Nancy Johnson at (571) 272-3219.



Charles A. Pearson  
Director  
Office of Petitions

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<sup>1</sup> As to requirement (3), in the petition as filed on June 1, 2004, it appears that petitioner has attempted to amend the specification by way of a request set forth on the second page of the petition. However, an amendment should be filed as a separate paper and should comply with § 1.121. See 37 CFR 1.4. By telephone call of January 2005, an informal request for such an amendment was made by petitions attorney Nancy Johnson. On February 23, 2005, petitioner provided the amendment in a separate paper.